

**JUDGE COTE**

Martin F. Casey (MFC-1415)  
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**08 CV 7137**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

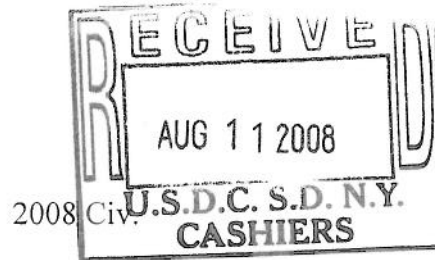
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INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA a/s/o LEPRINO FOODS,

Plaintiff,

- against -

M/V BUNGA PELANGI DUA, her engines, boilers,  
tackle, furniture, apparel, etc., *in rem*; ORIENT  
OVERSEAS CONTAINER LINE, LTD., *in personam*,

Defendants.  
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**COMPLAINT**

Plaintiff, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, (hereinafter  
“INA” or “Plaintiff”), by and through its attorneys, Casey & Barnett, LLC, as and for its  
Complaint, alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the  
Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333 and the  
General Maritime Law of the United States.

2. At all material times, Indemnity Insurance Company of North America was and is  
a corporation organized and existing by virtue of the laws of a foreign state with an office and  
place of business located at 140 Broadway, 40<sup>th</sup> Floor, New York, New York 10005 and is the

subrogated underwriter of a consignment of 2,628 cases of frozen string cheese laden aboard BUNGA PELANGI DUA, as more fully described below.

3. Upon information and belief, at all times hereinafter mentioned, BUNGA PELANGI DUA (hereinafter "vessel"), was and still is a vessel engaged in the common carriage of goods for hire and is now, or will be during the pendency of this action, within this District and subject to the jurisdiction of this Honorable Court.

4. Upon information and belief, at all times hereinafter mentioned, defendant, ORIENT OVERSEAS CONTAINER LINE, LTD. (hereinafter "OOCL" or "defendant"), was and still is a business entity duly organized and existing under the law of a foreign country, with an office and place of business at 2633 Camino Ramon, Suite 400, San Ramon, California 94583, and owns, operates, manages and/or charters ocean-going vessels, including the BUNGA PELANGI DUA, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the BUNGA PELANGI DUA, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

5. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

#### **RELEVANT FACTS**

6. On or about August 3, 2007, a consignment of 2,628 cases of frozen string cheese, laden in container No. OOLU6125804, was delivered to OOCL and the BUNGA PELANGI DUA in good order and condition, for shipment from Los Angeles, California, U.S.A. to

Shanghai, China, pursuant to OOCL bill of lading number OOLU1001474840 dated August 31, 2007.

7. Thereafter, the aforementioned consignment was loaded aboard the BUNGA PELANGI DUA, and the vessel sailed for the intended port of destination.

8. On or about September 23, 2007, the consignment arrived in Shanghai, China, whereupon, it was discovered that the cheese was not in the same good order and condition as when received by the defendants, but instead had suffered damages during transit as a result of temperature abuse.

9. The damage to the cargo was not the result of any act or omission of plaintiff, but, on the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, unseaworthiness and bailment on the part of defendants.

10. At all times relevant hereto, a contract of insurance for property damage was in effect between Leprino Foods and INA, which provided coverage for, among other things, loss or damage to the consignment.

11. Pursuant to the aforementioned contract of insurance between Leprino Foods and INA, monies have been and will be expended on behalf of Leprino Foods to the detriment of INA due to the damages sustained during transit.

12. As INA has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendants, INA has an equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages of against the defendant.

13. Plaintiff and its predecessors in title have performed all of the conditions precedent on their part to be performed under the terms of the said contract.

14. By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$102,205.97.

**WHEREFORE**, plaintiff prays that:

1. *In rem* service of process be issued against the M/V BUNGA PELANGI DUA, her engines, boilers, tackle, furniture, apparel, etc.; that the vessel be seized and that all those claiming an interest in her be cited to appear and answer under oath both all and singular the matters aforesaid;

2. The M/V BUNGA PELANGI DUA, her engines, boilers, tackle, furniture, apparel, etc., be condemned and sold to satisfy the judgments herein in favor of plaintiff;


3. The Court order, adjudge and decree that defendants, M/V BUNGA PELANGI DUA and ORIENT OVERSEAS CONTAINER LINE, LTD. pay to plaintiff the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs; and,

4. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York  
August 11, 2008  
115-940

CASEY & BARNETT, LLC  
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By:

  
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